

FINAL STATEMENT OF REASONS:

The California Department of Corrections (CDC) proposes to amend and/or adopt the following sections of the California Code of Regulations, Title 15. These sections apply to the Inmate Classification Score System. The inmate classification score, as part of the overall classification system for inmates, is the primary objective factor used to determine the most appropriate security level for each inmate. Correctional Counselors calculate and periodically adjust the classification score for each inmate through the use of a series of classification score forms.

The Legislature directed the CDC to conduct a research project per the Supplemental Report of the 1998 Budget Act, Item 5240-001-0001, Number 4, entitled, "Inmate Classification Pilot Project" to test revised classification score forms and determine whether or not the revised score forms result in an improved system. The pilot project was implemented on November 1, 1998. For a period of six months, all newly committed felons were selected for participation in the project. The number of inmates selected during this six-month period was 21,734. The design and implementation of the multi-year research study was conducted with the assistance of Dr. Richard A. Berk, Ph.D., University of California, Los Angeles, Statistical Consulting Center.

These proposed changes to the Inmate Classification Score System are being made as a result of the findings of the Violent Felon Identification Program (formerly known as the Classification Pilot Project). This pilot program tested revisions to the Inmate Classification Score System to determine whether or not the revised classification score forms were more effective in predicting an inmate's potential for future misconduct in prison.

The revisions made to the classification score forms and the improvements made to the Inmate Classification Score System are described in the Report to the Legislature dated December 1, 1999. Dr. Berk has since provided information that affirms that the revised score factors on the initial CDC Classification Score Sheet, CDC Form 839, are more effective in predicting the propensity for misconduct at initial placement.

These revisions also incorporate mandates of the Coleman, Clark, and Armstrong court orders. They provide revised direction for completion of CDC Form 128-G, Chrono Classification Regular, to reduce workload associated with duplicative classification documentation. It is necessary to include these amendments in order to clarify the classification documentation requirements for actions related to all Classification Committee documentation, transfer reviews, all Classification Committee hearings involving inmates treated under the Mental Health Services Delivery System (MHSDS), regardless of housing, and the initial classification review at any given institution.

The CDC has a compelling urgency to protect its staff and inmates as well as to prevent inmate violence. Although the Inmate Classification Score System is validated and found to work well to sort inmates according to the likelihood of becoming involved in misconduct during incarceration, small improvements in the system are possible. The CDC conducted computer-simulated testing of several

configurations of classification forms using a variety of variables. Furthermore, CDC is managing a 24-month clinical trial to confirm the usefulness and clarity of the regulatory changes, the impact on prison distribution, and the implication of inmate placement on inmate misconduct. Implementation of minor, but critical, regulatory changes shall provide the tools to increase the effectiveness of initial placement while maintaining fundamental fairness and objectivity. The proposed regulatory changes shall also establish Mandatory Minimum Score Factors, reduce the weight reflective of term length, initiate new and revised classification score forms to maximize ease of application to ensure accuracy, and shall clarify placement criteria. It is crucial that CDC utilize the research findings to update, clarify, and further improve the Inmate Classification Score System.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

The words "classification score" have been replaced with "placement score" throughout the entire text in order to be consistent with the revisions to the inmate classification score forms. In addition "classification level" has been replaced with "security level" throughout the entire text. This language is amended to reflect the current use of "security level" as it relates to the differences in the physical plant of institutions within the Department. In addition, "classification level" is no longer the term used statewide to define levels of security for institutions.

This amendment includes the new revision date of 12/02 for the CDC Forms 839, 840 and 841.

Section 3375 Classification Process is amended.

Subsection 3375(a) is unchanged.

Subsection 3375(b) is amended to clarify the Department's goals in the classification process.

Subsection 3375(c) is unchanged.

Subsection 3375(d) is amended to replace the word "classification" with "placement" for the reasons previously mentioned.

Subsection 3375(e) is unchanged.

Subsection 3375(f) is amended to include the letter "t" which was previously missing on the word "at."

Subsection 3375(f)(1)(A) is amended to include "security" and replace the word "classification" with "placement" for the reasons previously mentioned.

Subsection 3375(f)(1)(B) through (f)(1)(E) are unchanged.

Subsection 3375(f)(1)(F) is amended to include "receipt of new information that may affect staff, inmates, the public or the safety and security of the institution/facility." This amendment will align this language with current departmental policy. The receipt of new critical case information may require that an inmate be transferred involuntarily when it affects the inmate's case factors to

the degree that the inmate's housing is no longer consistent with safety and security. The word "their" is amended to "his or her" to be grammatically correct, "placement score" replaces "classification score" for the reasons noted above, and "security" level replaces "classification" level to be consistent with the changes proposed in Section 3377.

Subsection 3375(f)(1)(G) is adopted to include an updated description of housing and program options that may occur. There are circumstances in which various levels of security have been designated within the same housing location. This language is adopted to include those housing situations that are to be considered "adverse effect."

Subsections 3375(f)(2) through (f)(4) are unchanged.

Subsection 3375(f)(5) is amended to clarify and simplify the language.

Subsection 3375(f)(6) and (f)(7) are unchanged.

Subsection 3375(g) is amended to include the revision date of 10/89 for the CDC Form 128-G, Chrono Classification – (Regular).

Subsection 3375(g)(1) was renumbered from existing language from the initial paragraph in 3375(g) and is amended to make some nonsubstantive changes to clarify and improve the ease of reading.

Subsections 3375(g)(1)(A) through (g)(1)(C) are renumbered from (g)(1) through (3) and are amended to remove the word "committee," add the word "decision," and remove "taken," to further clarify that the purpose for the hearing is to specify the reasons for each decision or action made.

Subsections 3375(g)(1)(D) through (g)(1)(F) are adopted to include the inmate's preference and reasons for that preference along with his/her agreement or disagreement with the committee action. In addition, this adoption allows, if necessary, for the use of any reasonable accommodations to ensure effective communication and documentation of a difference of opinion if one is brought up.

Subsections 3375(g)(1)(G) and (g)(1)(H) are renumbered from existing subsections 3375(g)(4) and (g)(5) and are amended to include "the omission of," and to remove the words "provided inmates," and "being denied or the fact that the inmate waived any safeguards" in order to clarify the classification documentation requirements related to classification committee documents. In addition, we have made some nonsubstantive changes to clarify and improve the ease of reading.

New subsections 3375(g)(1)(I) through (L) are renumbered from existing subsections 3375(g)(6), (7), (8) and (9) respectively and are unchanged.

Subsection 3375(g)(2) is adopted to direct staff as to what information is mandated in the transfer Classification Chrono, in addition to the documentation required in all Classification Chronos which include: the inmate's requested transfer preference and reason, the institution to which the committee recommends transfer with an alternate recommendation and reasons, in addition

to a statement of the inmate's work group upon transfer based on adverse or non-adverse transfer circumstances.

Subsection 3375(g)(3) is adopted to require a clinician to be present at committee meetings for Enhanced Outpatient Program inmates and those housed in a Mental Health Crisis Bed. This section also directs staff as to what information is mandated in the Classification Chronos when the inmate is treated under the MHSDS. Incorporating this language will also bring the Department into compliance with the Coleman court order.

Subsection 3375(g)(4) is adopted to direct staff as to what information is mandated in the Classification Chronos when the inmate is treated under the MHSDS which includes a clinical assessment of the inmate's likelihood of decompensation if retained in segregated housing, and a summary of information provided by the clinician when an actively decompensating mentally ill inmate is recommended for transfer to a mental health program, and the decision of the committee is to retain the inmate in segregated housing. Incorporating this language will also bring the Department into compliance with the Coleman court order.

New subsections 3375(g)(5) through (g)(5)(D) are renumbered from existing subsections 3375(g)(10) through (g)(10)(D) respectively and amended to include removal of the requirement to document the inmate's next regularly scheduled classification review. This date is controlled by regulations and documentation in this Classification Chrono is unnecessary workload. This amendment also includes full case factors in the initial classification review at each institution; modifications include the inmate's date of birth rather than the inmate's age at the time of review. This change provides staff with more precise information as to the inmate's current, as well as prior age. These changes also include any parole revocation offenses resulting in good cause findings if the inmate is a parole violator. These changes are necessary for clarification with regards to the commitment offenses included on this form.

Subsection 3375(g)(5)(F) is renumbered from existing subsection 3375(g)(10)(E) and is amended to include when the inmate was received by the Department "for the current incarceration" for clarity.

Subsection 3375(g)(5)(G) is adopted to include the county of last legal residence, which is necessary for parole planning.

Subsections 3375(g)(5)(H) through (g)(5)(L) are renumbered from existing subsections 3375(g)(10)(F) through (g)(10)(J) respectively and amended to include the reason the inmate was transferred to the current location along with some minor changes for clarification. This helps staff identify program issues and future transfer concerns.

Subsections 3375(g)(5)(N) and (g)(5)(O) are renumbered from existing subsections 3375(g)(10)(K) and (g)(10)(L) and amended to keep with the directives of the Clark and Armstrong Remedial Plans. Staff are required to document a determination of the suitability of the inmate's current housing assignment, his or her Developmental Disability Placement assessment designation, and his or her required reasonable accommodations.

Subsections 3375(g)(5)(P) and (g)(5)(Q) are renumbered from existing subsections 3375(g)(10)(N) and (g)(10)(O) and are unchanged.

Subsection 3375(g)(5)(R) is renumbered from existing subsection 3375(g)(10)(P) and amended to include “disability” concerns.

Existing subsections 3375(g)(4) through (g)(9) were relocated to new subsections 3375(g)(1)(I) through (g)(1)(L) respectively.

Existing subsections 3375(g)(10) through (g)(10)(U) are repealed.

Subsection 3375(h) is unchanged.

Subsection 3375(i) is amended to spell out the abbreviation for CSR. In addition, this amendment makes language less restrictive and allows for designated staff to expedite placement.

Subsection 3375(j) through 3375(j)(3) are amended to include the CDC Form 839 title “CDC Classification Score Sheet” and a new revision date of 04/02.

Subsection 3375(j)(4) is amended to replace “classification” and include the word “security” for reasons mentioned previously.

Subsection 3375(k) is amended to include the CDC Form 840 title “CDC Reclassification Score Sheet,” a new revision date of 04/02, and to replace “classification” for reasons mentioned previously.

Subsection 3375(k)(1)(A) is amended to redefine the method of determining an inmate's annual review period. This new rule was tested in the pilot project and found to provide consistency in identifying review periods. The new rule also allows for an inmate to begin earning favorable behavior points immediately upon reception.

Subsection 3375(k)(1)(B) is amended to clarify language relative to granting favorable behavior points. The word "credit" is replaced with "points." This factor gets confused with the word "credit" in the work incentive program. During the course of the pilot program, we found that staff confused "favorable credit" with "work incentive credit." The score form language was developed in 1980 and the Work Incentive Law was passed in 1983. The word "points" will be an acceptable change that will provide clarification to staff and inmates. "Classification" level is replaced by "security" level for the reasons cited.

Subsection 3375(k)(1)(C) is unchanged.

Subsection 3375(k)(2) is amended to include that a CDC Form 841, CDC Readmission Score Sheet, shall be completed pursuant to Section 3375.5 as part of the readmission process when a parolee is returned to prison because this new readmission form to be used for this purpose. A parolee who is returned to prison will no longer be scored on a CDC Form 840.

Section 3375.1 Inmate Placement is amended.

Classification score has been replaced with “placement score” throughout the entire text in order to be consistent with the revisions to the Inmate Classification Score forms. In addition, "classification" level has been replaced with "security" level throughout the entire text. This language is amended to reflect the current

use of "security level" as it relates to the differences in the physical plant of institutions within the Department. "Classification level" is not the term used statewide to define levels of security for institutions.

Section 3375.2 Administrative Determinants is amended:

"Classification" score has been replaced with "placement" score throughout the entire text in order to be consistent with the revisions to the Inmate Classification Score forms. In addition, "classification" level has been replaced with "security" level throughout the entire text. This language is amended to reflect the current use of "security level" as it relates to the differences in the physical plant of institutions within the Department. "Classification level" is not the term used statewide to define levels of security for institutions. In addition, "his/her" now replaces "their" for grammatical clarity.

Section 3375.2(b) is amended to include the above-mentioned changes in addition to adding, "irregular placement conditions know as administrative [determinants]." This language has been added to clarify that administrative determinants fall under the irregular placement section of all the classification score sheets.

Section 3375.3 CDC Classification Score Sheet, CDC Form 839, Calculation is amended:

Score factors that have been deleted are: Marital Status, Employment History, Education Background, Military Service, Escape, and Minimum Custody, Dorm Living, and Average or Above Program during the previous 12 months of incarceration. Our study conducted by Dr. Berk, has determined that these score factors are not predictive of future misconduct in prison.

Subsection 3375.3(a) is amended to include corresponding box numbers for the CDC Form 839.

Subsection 3375.3(a)(1) is adopted to include age at first arrest as a score factor used in calculating an inmate's score on the CDC Form 839. This factor was determined to be very effective in predicting the potential for future misconduct in prison.

New subsection 3375.3(a)(2) is adopted to define the score factor "Age at Reception" used in calculating an inmate's score on the CDC Form 839. The pilot project tested the UCLA finding that the younger the inmate, the higher risk of future in-custody misconduct. Therefore the Age at Reception factor was modified to include a scale of age. This factor was determined to be effective in predicting potential for future misconduct in prison.

New subsections 3375.3(a)(3) and (a)(3)(A) is renumbered from existing subsections (a)(1) and (a)(1)(A) and are amended to include the correlating box numbers and to state that the maximum number of points to be applied for this factor is 50. This change was made to include the maximum number of points so that an inmate who is serving a lengthy term, absent other case factors that indicate a propensity for violence, (e.g., a "Third Striker," nonmurder case,

sentenced to 25 years to life), could be considered for placement in Level III housing from the reception center.

New subsection 3375.3(a)(3)(B) is renumbered from existing subsection (a)(1)(B) and is amended to redefine the value of the term in years. The existing system has been criticized for giving too much weight to the length of sentence without regard to the inmate's behavior. The weight given to the term in years has been reduced to two points per year. Dr. Berk's analysis substantiates that "the association between misconduct and length of sentence is weak, after accounting for other background items such as age."

Subsections 3375.3(a)(3)(B) 1. through (a)(3)(B) 4. are adopted to include explanatory language to properly apply these values in addition to include that if the score is more than 50, then 50 shall be used as the final term score. For the reasons previously cited.

Subsection 3375.3(a)(4) is adopted to include Street Gang/Disruptive Group as a score factor used in calculating an inmate's score on the CDC Form 839, Classification Score Sheet. This factor was determined to be effective in predicting potential for future misconduct in prison.

Subsection 3375.3(a)(4)(A) is adopted to include a list of codes for a counseling staff to use when documenting the type of street gang or disruptive group that most closely identifies the inmate's gang.

Subsection 3375.3(a)(4)(B) is adopted to include a list of codes for a counseling staff to use when documenting the method that was used to identify the inmate as being involved in gang activity. The ten methods of verification listed are currently in the California Code of Regulations (CCR) Section 3378. It is important that the inmate not be identified as a gang member just because he or she is from a particular part of the State or from a county known for gang activity. The codes provide for a consistent method of identification to assure that the inmate is not misidentified.

Subsection 3375.3(a)(5) is adopted to include mental illness as a score factor used in calculating an inmate's score on the CDC Form 839. This factor was determined to be effective in predicting potential for future misconduct in prison.

Subsection 3375.3(a)(5)(A) is adopted to assure that the points assessed for mental illness are not applied for an inmate who has been designated Medical Necessity. The MHSDS is clear that although the inmate may be included in the MHSDS, that the condition is considered situational and temporary.

Subsection 3375.3(a)(5)(B) is adopted to include documentation of the level of care assigned to the inmate who is assigned to the MHSDS. This is included to automate the status of the inmate when undergoing reception center processing.

Subsection 3375.3(a)(6) is adopted to include Prior Sentences Served as a score factor used in calculating an inmate's score on the CDC Form 839. This factor was determined to be effective in predicting potential for future misconduct in prison. In addition, when the objective score system was first implemented in 1980; it included a variable that assessed points for Prior Sentences Served. In 1986, this score factor was deleted and a score factor, Undocumented Prior

Incarcerations, was substituted to assess points when behavior during a prior incarceration is unknown. This has resulted in litigation. This score factor will replace the score factor identified in subsections 3375.3(b)(4)(A) through (C). The rules of application are the same as those used in the original language, but condensed for clarity.

Subsection 3375.3(a)(7) is adopted to include prior incarcerations as a score factor used in calculating an inmate's score on the CDC Form 839. This changes the process of making corrections to the CDC Form 839 subsequent to endorsement. The total value of the corrections is entered in the score adjustment area instead of correcting the total score on the CDC Form 839. This solves the issue that currently exists in changing the total score that affects the database. For the database, changing the total score "changes history." Because the endorsement was made as a result of the original score, the corrected score may reflect a different security level and therefore make the endorsement look "wrong" in the database.

Subsection 3375.3(a)(8) is amended to clarify that this section (score adjustment, boxes 47-49) is to be used to correct a CDC 839 score sheet with a form revision date prior to 07/02. The new score adjustment area was created to account for the total value (whether positive or negative) of all corrections that had to be made on prior score sheets. Instead of the labor-intensive method that is used in the current score system, a new method was created that allows the counseling staff to total the points and enter them in the boxes provided. That score is then included in the total score. The current system requires one correction document to be prepared for each correction. For example, if a correction is made to a score sheet, but five score sheets were prepared since that time, then a total of six correction documents must be prepared. Not only is the current process very time consuming, labor intensive and lends itself to create more errors, these corrections also "change history" in the database. Changing history, in effect, paints a false picture of what occurred at that point in time. The primary purpose of the correction is to record the correct total score for the inmate. The new score adjustment process does that.

Existing subsection 3375.3(a)(2) is repealed. Our study conducted by Dr. Berk has determined that this score factor is not predictive of future misconduct in prison.

Existing subsection 3375.3(a)(3) is repealed. Our study conducted by Dr Berk has determined that this score factor is not predictive of future misconduct in prison.

Subsection 3375.3(b) is amended to include new correlating box numbers.

Subsection 3375.3(b)(1) is repealed, as this rule is no longer applicable.

New subsection 3375.3(b)(1) is renumbered from 3375.3(b)(1)(A) and is amended to clarify the rule for identifying and determining the "last 12 consecutive months in custody."

Existing subsection 3375.3(b)(2) is renumbered to new subsection 3375.3(b)(4).

Subsection 3375.3(b)(2) is adopted to define, for consistency and clarity, the terms "12 months" and "one month" when applying the rule noted above. Prior county jail sentences and total prior incarceration time is easier to calculate using these definitions. Using a "30-day month" for purposes of calculating incarceration time is also consistent with CCR Section 3341.5 "SHU Time Computation Table" which states: "NOTE: For purposes of computing remainder days, 30 days constitutes a month."

Subsection 3375.3(b)(2)(A) is renumbered from 3375.3(b)(1)(B) and is amended to include a grammatical change.

Subsection 3375.3(b)(2)(B) renumbered from 3375.3(b)(1)(C) and is amended for clarity and to redefine the rule for application of favorable behavior points in this section which is, that four favorable points be granted if during an inmates prior incarceration of 12 months or more there is no record of unfavorable prior behavior. The current system demands that there be documentation of prior "good" behavior before an inmate's score may be reduced during reception center processing. The reality of the situation is that jails and prisons do a much better job of documenting "bad" behavior; "good" behavior is rarely formally documented. Thus a conforming inmate is disadvantaged by a shortcoming of the system itself. To rectify this problem, absence of documentation of "bad" behavior while previously incarcerated will now be defined as "good" behavior and the incoming inmate's score will be reduced. The change to the rule in this section was tested in the pilot project. Therefore, application of favorable points is assumed absent any documentation to the contrary.

Subsection 3375.3(b)(2)(B) 1. is renumbered from 3375.3(b)(1)(C) 1. and is amended to change the meaning of this sentence. The word "shall" is replaced by "may need to." If a counseling staff receives behavioral information for an inmate after the score is applied, it *may* change the score. The word "shall" is incorrect because the type and seriousness of the behavioral information received will determine whether or not the score will be affected.

Existing subsection 3375.3(b)(1)(C) 2. is repealed in order to redefine the rule for application of favorable behavior points in this section. The current system demands that there be documentation of prior "good" behavior before an inmate's score may be reduced during reception center processing. The reality of the situation is that jails and prisons do a much better job of documenting "bad" behavior; "good" behavior is rarely formally documented. Thus a conforming inmate is disadvantaged by a shortcoming of the system itself. To rectify this problem, absence of documentation of "bad" behavior while previously incarcerated will now be defined as "good" behavior and the incoming inmate's score will be reduced. The change to the rule in this section was tested in the pilot project. Therefore, application of favorable points is assumed absent any documentation to the contrary."

Subsections 3375.3(b)(3) and (b)(3)(A) are amended to redefine the rule for applying favorable points for the last 12 months of incarceration for the reasons cited above in subsection 3375.3(b)(1)(C). The word "credits" is replaced by "points" for the reasons noted above.

Subsections 3375.3(b)(3)(B) and (C) are repealed. The findings submitted by Dr. Berk indicate that the score factors described in the section do not have any value in predicting future misconduct. The factor related to "Dorm Living" was removed from the pilot project score forms as previous research showed that this factor was difficult to verify and apply fairly. In addition, pilot project results showed that the score factors for "Successfully completed at least 12 months (or 4 months) of minimum custody in last incarceration(s)" and "Average or above performance in work, school, or vocational program for last incarcerated year" were unrelated to an inmate's initial placement in 99.97 percent of the pilot cases. Dr. Berk's analysis supports the elimination of these factors from the CDC Form 839.

New subsection 3375.3(b)(4) is renumbered from 3375.3(b)(2) and is amended to clarify the rules of application for Unfavorable Prior Behavior. This proposed language does not change the rules of application for this score factor. During the pilot project, it became clear that the language in this section was unclear. Staff were having a difficult time understanding the parameters of when and how to apply the points for "Unfavorable Prior Behavior" if the behavior occurred outside of a 12-month period. The language on the score form says, "Serious disciplinary last incarcerated year," and staff assumed that *any and all* serious disciplinarys that occurred outside of the last incarcerated year could not be counted. However, the intent of the current regulations is to allow for "assessment of points under more than one factor." This proposed language is intended to clarify that intent.

Subsection 3375.3(b)(4)(A) is renumbered from 3375.3(b)(2)(A) and is amended to provide clarifying language.

Existing subsection 3375.3(b)(2)(B) is repealed. The score factor for Escape has been shown to be ineffective in predicting in-custody misconduct and is therefore being deleted. Because the incidence of escape is so rare, its correlation to future in-custody misconduct could not be established. For this reason, score factors related to Escape are deleted. The Mandatory Minimum Process and the Administrative Determinant process is used to prevent the recurrence of escape behavior.

New subsections 3375.3(b)(4)(B) is renumbered from 3375.3(b)(2)(C) and is amended to provide consistency. Language used to apply unfavorable behavior points must be consistent with the language that is used in defining serious disciplinary behavior per Section 3323(d)(1) and (2) and Section 3323 (f)(8). Section 3323 describes serious behavior as "battery" or "attempted battery." The unfavorable behavior points assessed for this behavior must accurately describe it. Therefore, the term "battery" replaces "physical assault" in this subsection.

Subsection 3375.3(b)(2)(C)(2.) is repealed. Replacing "physical assault" with the word "battery" for the reasons cited above renders this language untrue. To try to further define this behavior is unnecessary.

Subsection 3375.3(b)(4)(C) is renumbered from 3375.3(b)(2)(D) and is amended to replace "physical assault" with "battery" for consistency.

Subsection 3375.3(b)(4)(D) is renumbered from 3375.3(b)(2)(E) and is amended to provide consistency. Language used to apply unfavorable behavior points must be consistent with the language that is used in defining serious disciplinary behavior per Section 3323. The language "smuggling or trafficking drugs" has been changed in Section 3323 and now describes this type of serious disciplinary behavior as "distribution of any controlled substance" in an institution/facility or contract health facility. Therefore, the language "distribution of any controlled substance" replaces "smuggling or trafficking drugs."

Subsection 3375.3(b)(4)(E) is renumbered from 3375.3(b)(2)(F) and is amended to include language to be consistent with language in subsection 3323, in defining "possession or manufacture of a deadly weapon." This type of instrument, if found in a special program housing unit, is considered a weapon and not authorized possession of materials. In addition, this section has been amended to include corresponding form box numbers.

Subsection 3375.3(b)(4)(F) is renumbered from 3375.3(b)(2)(G) and is amended to include corresponding form box numbers.

Subsection 3375.3(b)(4)(G) is renumbered from 3375.3(b)(2)(H) and is amended to replace "assault" with "battery" for the reasons cited above in addition to some grammatical changes.

Existing subsection 3375.3(b)(4) is repealed with the aforementioned subsections describing the score factor "Prior Sentences Served" for the reasons previously cited.

Subsection 3375.3(c) title is adopted to include the heading "Preliminary Score" which identifies the name of the score on the score form in addition to the corresponding box numbers on the form.

Subsection 3375.3(c)(1) is renumbered from 3375.3 first paragraph and is amended to provide clarity in calculating the total score. "Preliminary" replaces "classification" score.

Subsection 3375.3(c)(2) is adopted to include that the score is right-hand justified.

Subsection 3375.3(c)(3) is relocated from the last paragraph of 3375.3(c)(1) and is amended to include some grammatical changes for ease of reading.

Existing subsection 3375.3(d) is renumbered to subsection 3375.3(f).

Subsection 3375.3(d) is adopted to define when and how the Mandatory Minimum Score is applied to an inmate's score. The addition of the Mandatory Minimum Score process to the Inmate Classification Score System ensures that the Placement Score for an inmate with specific case factors will never fall below the threshold for the necessarily secure level. In the current classification score system, classification score alone does not dictate the security level to which an inmate will be assigned. Case factors may require placement inconsistent with the inmate's classification score. This is an Administrative Placement ("override" or "out-of-level placement") as described in Section 3375.2. The Mandatory Minimum Score process was tested in the pilot project and found to be effective in reducing the number of Administrative Placement codes applied to the inmates

in the pilot project. This new procedure changes the way that some Administrative Placements are characterized, but does not alter the placement of any individual inmate.

Subsection 3375.3(e) is adopted to define the placement score as it relates to an inmate's placement within the Inmate Classification Score System. The placement score will be the score calculated from the inmate's Background Factors and the inmate's Prior Incarceration Behavior unless a Mandatory Minimum Score Factor has been applied that requires placement at a higher security level. The Placement Score will be the score that is used by the endorsing authority to determine an inmate's housing within the Department.

Subsection 3375.3(f) is renumbered from existing subsection 3375.3(d) and is amended to spell out Classification Staff Representative (CSR).

Subsection 3375.3(d)(1) is repealed. This instruction is no longer correct.

Subsection 3375.3(f)(1) is renumbered from 3375.3(d)(1)(A) and is amended to clarify that it is the CSR that determines the appropriate housing for an inmate in keeping with departmental needs, safety and security. In addition this amendment is to replace "Total Classification Score" with "Placement Score" and update language regarding the role of the CSR.

Subsections 3375.3(d)(1)(B) and (d)(1)(B) 1. are repealed. The "controlling determinant" no longer applies.

Subsection 3375.3(f)(1)(A) is renumbered from 3375.3(d)(1)(B) 2. and is amended to include that up to five administrative determinants may be entered on the CDC form. In addition, this section is amended to include "security" level consistent with proposed changes per Section 3377 and "placement score" consistent with the reasons previously cited.

Subsection 3375.3(f)(1)(B) is renumbered from 3375.3(d)(2)(B) and is unchanged.

Subsection 3375.3(f)(2) is amended to replace "classification" with "placement" and "security" for reasons previously mentioned.

CDC Reclassification Score Sheet, CDC Form 840, Calculation is amended.

The following subsection addresses Favorable Behavior Since Last Review and is renumbered from 3375.4(a) to 3375.4(b):

The initial paragraph is amended to include "new preliminary score" for clarification.

Subsection 3375.4(a) is renumbered from (b) and is amended to explain "Favorable Behavior Since Last Review" instead of "Unfavorable Behavior Since Last Review," in this section. For consistency, "Favorable Behavior" is considered and evaluated prior to "Unfavorable Behavior" on all score forms.

Subsection 3375.4(a)(1) is renumbered from (b)(1) and is amended to replace the word "credits" with "points" for the reasons previously cited.

Subsections 3375.4(b)(2)(A), (B), (C) are repealed. Favorable points will no longer be given for continuous dormitory living for the reasons previously cited.

Subsection 3375.4(a)(2) is renumbered from (b)(3) and is amended to replace the word "credits" with "points" for the reasons previously cited. Remaining language is deleted as it is confusing and conflicts with the revised language explaining the review period dates on the revised forms.

Subsection 3375.4(a)(3) is renumbered from (b)(4) and is amended to replace the word "credits" with "points" for the reasons previously cited. Changes reflect clarifying language. The example given "such as an inmate who is unassigned for medical reasons" has confused caseworkers for years. Using this example poses many problems for determining whether or not the inmate is entitled to the points. The rule can be applied correctly with the language provided without using this example.

Subsection 3375.4(b) is renumbered from (a) and is amended to explain "Unfavorable Behavior Since Last Review" instead of "Favorable Behavior Since Last Review," to be consistent with the order of the section on the revised forms.

Subsection 3375.4(b)(1) is renumbered from (a)(1) is amended to revise the number of points assessed for a serious disciplinary. A key premise of the pilot project is that the best predictor of misconduct in future behavior is recent prior behavior. The existing system does not discriminate well between felonious or violent misconduct and less serious misconduct. The existing system assigns six points for each serious disciplinary regardless of the level of seriousness. The revised forms have been tested with an escalating scale related to the seriousness of the misconduct. The revisions to the language in this section describe the appropriate number of points to be given based on the Division for which the inmate was found guilty as cited in CCR Section 3323, Disciplinary Credit Forfeiture Schedule.

Subsection 3375.4(b)(1)(A) is renumbered from (a)(1)(A) and is unchanged.

Subsection 3375.4(b)(1)(B) is renumbered from (a)(1)(B) and is amended to renumber the subsection from (a) to (b). The Escape factor was removed from the list of offenses and resulted in the renumbering. As previously cited, the score factor for Escape has been shown to be ineffective in predicting in-custody misconduct and is therefore being deleted. Because the incidence of Escape is so rare, its correlation to future in-custody misconduct could not be established. For this reason, score factors related to Escape are deleted. The Mandatory Minimum Process and the Administrative Determinant process are used to prevent this.

Existing subsections 3375.4(a)(2)(A) and (a)(2)(B) are repealed. The Escape factor is removed from this list of offenses for the reasons previously cited.

New subsections 3375.4(b)(2) and (b)(2)(A) are renumbered from (a)(3) and (a)(3)(A) and are amended to be consistent with the changes included in Section 3375.3(b)(4)(C) regarding Unfavorable Prior Behavior.

Subsection 3375.4(a)(2)(B) is repealed. This section is being repealed this rule no longer applies. Battery is now covered in subsection 3375.4(b)(2) and (b)(2)(A).

Subsection 3375.4(b)(3) is renumbered from (a)(4) and is amended to replace "physical assault" with "battery" for the reasons cited. "Attempted battery" is added to this subsection. This amendment is made to be consistent with the list of offenses in Section 3375.3, Unfavorable Prior Behavior, Attempted Battery on an Inmate, for which an inmate is given unfavorable points.

Subsection 3375.4(b)(4) is renumbered from (b)(5) and is amended to use the same language as Section 3323, for consistency.

Subsections 3375.4(b)(5) and (b)(6) are renumbered from (a)(6) and (a)(7) respectively and are amended to include corresponding form box numbers.

Subsection 3375.4(b)(7) and (7)(A) are renumbered from (a)(8) and (a)(8)(A) and are amended to make the definition clear and consistent. Section 3000 already defines Serious Injury. Any further definition here may lead to confusion and misapplication.

Subsection 3375.4(b)(7)(B) is renumbered from (a)(8)(B) and is amended to replace “assault” with “batter” for reasons previously mentioned.

Existing subsections 3375.4(c) and (c)(1) are renumbered to subsection 3375.4(h).

Existing subsection 3375.4(c)(2) is renumbered to (g).

New subsection 3375.4(c) is adopted to clarify that this section (score adjustment, boxes 70-72) is to be used to correct a CDC 840 score sheet with a form revision date prior to 07/02. The new score adjustment area was created to account for the total value (whether positive or negative) of all corrections that had to be made on prior score sheets. Instead of the labor-intensive method that is used in the current score system, a new method was created that allows the caseworker to total the points and enter them in the boxes provided. That score is then included in the total score. The current system requires one correction document to be prepared for each correction. For example, if a correction is made to a score sheet, but five score sheets were prepared since that time, then a total of six correction documents must be prepared. Not only is the current process very time consuming, labor intensive and lends itself to create more errors, these corrections also “change history” in the database. Changing history, in effect, paints a false picture of what occurred at that point in time. The primary purpose of the correction is to record the correct total score for the inmate. The new score adjustment process does that.

Existing subsection 3375.4(d) is renumbered to new subsection 3375.4(k).

Subsection 3375.4 (d) is adopted to define prior preliminary score. The current Classification Score System provides for one classification score. However, the proposed revisions to the score system uses three scores. The calculated score (or total score based on calculated weights of the variables), a mandatory minimum score and a placement score. For purposes of updating the inmate's score for reclassification, the beginning score is the prior preliminary score. This score could be the most current calculated score from the CDC Form 839 (preliminary score), the most current calculated score from the CDC Form 840

(new preliminary score) or the most current calculated score from the CDC Form 841 (new preliminary score).

Subsection 3375.4 (e) is adopted to define net change in behavior score. The net change in behavior score is the same total as identified in the current regulations CCR 3375.4(c) as recalculation of the classification score except that it now includes the Score Adjustment value, if any.

Subsection 3375.4 (f) is adopted to define preliminary score subtotal. This line is provided for ease of calculation of the subtotal and requires that the subtotal cannot be less than zero. This subtotal is then added to, or subtracted from, any change in term points. The current score system fails to effectively account for changes to the term points. Because the current system has no subtotal that does not fall below zero, any change in term points may get absorbed by behavior points in the total calculation of the score.

Subsection 3375.4(g) is renumbered from (c)(2) and is amended to include changes to the rules of application for Change in Term Points. The new point value for each year of difference in the inmate's total term is now two points per year. This rule is made to be consistent with the original base calculation of the value of the inmate's total term on the CDC Form 839. The new score factor name "New Preliminary Score." This replaces "classification score."

Subsection 3375.4(g)(1) is renumbered from (c)(2)(A) and is amended to remove parole violators they are now covered on the new CDC Form 841.

Subsection 3375.4(g)(2) is renumbered from (c)(1)(B) and is amended to include that when an inmate receives a new or additional sentence to prison, which changes the total term length, then two points shall be added or subtracted for each year of difference. In addition, this section removes the instructions to "subtract one year from the total term length and multiply by three," as this no longer applies.

Subsection 3375.4(g)(3) is renumbered from (c)(1)(C) and is amended to include that if a parole violator receives a new term after the CDC Form 841 has been endorsed, the prior term points shall be given a minus value and combined with the new term points and the difference is then the change in term points.

Subsection 3375.4(g)(4) is renumbered from (c)(1)(D) and is amended to remove the clause that states that a concurrent new term shall not change term points. This is being replaced with a statement that includes that staff is not to record a change in term points unless there is a change in the total term. This change is being made for clarity purposes.

Subsection 3375.4(h) is renumbered from (c) and (c)(1) and amended to replace "classification" with preliminary, to include corresponding box numbers and to remove some language that references incorrect subsections due to the renumbering of Section 3375.4. This section now states that the new preliminary score is the result of combining the preliminary score subtotal and any adjustments resulting from a change in term points.

Subsection 3375.4(i) is adopted to define when and how the Mandatory Minimum Score is applied to an inmate's score. The addition of the Mandatory

Minimum Score process to the Inmate Classification Score System ensures that the Placement Score for an inmate with specific case factors will never fall below the threshold for the necessarily secure level. In the current Classification Score System, classification score alone does not dictate the security level to which an inmate will be assigned. Case factors may require placement inconsistent with the inmate's classification score. This is an Administrative Placement ("override" or "out-of-level placement") as described in Section 3375.2. The Mandatory Minimum Score process was tested in the pilot project and found to be effective in reducing the number of Administrative Placement codes applied to the inmates in the pilot project. This new procedure changes the way that some Administrative Placements are characterized, but does not alter the placement of any individual inmate.

Subsection 3375.4(j) is adopted to define the placement score as it relates to an inmate's placement within the Inmate Classification Score System. The placement score will be the score calculated from the inmate's Background Factors and the inmate's Prior Incarceration Behavior unless a Mandatory Minimum Score Factor has been applied that requires placement at a higher security level. The Placement Score will be the score that is used by the endorsing authority to determine an inmate's housing within the Department.

New subsections 3375.4(k) is renumbered from (d) and is amended to include the types of endorsing authorities that apply to this section.

Existing subsections 3375.4(d)(1) and (d)(1)(A) are repealed in order to include language that is consistent with CCR 3375.3(d).

New subsections 3375.4(k)(1) through (k)(3) are renumbered from (d)(1)(B) and (d)(1)(C) and are amended to read consistently with the language already define in CCR 3375.3(d).

3375.5 CDC Readmission Score Sheet, CDC Form 841, Calculation is adopted.

The CDC Form 841 has been created to effectively identify and score all inmates who are returned from parole. These inmates are currently scored on a CDC Form 840. The CDC Form 840 is primarily a reclassification document and does not easily accommodate scoring inmates who are returned to CDC from parole status either as a Parole Violator or a Parole Violator Returned to Custody.

The procedure for calculating the classification score review periods for parole violators was revised. Therefore, a new area of the pilot CDC Form 840 was tested called the "Readmission Review Period Calculation." Under the current system, inmates returning as parole violator require a rather complex set of calculations to address periods of review at the end of the previous incarceration that were not addressed prior to parole. For instance, an inmate may receive a regular six-month review several months prior to parole. Upon return, those months between the last review and the date of parole have not been addressed on a score form. In some cases there may be full six-month review periods unaccounted for.

The current system calls for counseling staff to combine partial review periods prior to parole, with time at the beginning of the new incarceration, to equal six

months. For example, under current procedures, an inmate who received a six-month review three months prior to parole, will not receive the first reclassification score update until he or she has been back in prison for an additional three months. At that time, the behavior documented during the last three months of the previous incarceration is evaluated along with the behavior from the first three months of the new incarceration. The combined evaluation covers one full six-month period of incarceration. Because this process is difficult to administer, significant changes have been made.

Under the new rules of application, all behavior that occurred before parole and is unaccounted for is accounted for during reception processing. New six-month review periods start on the day of arrival at the reception facility. In order to accomplish this, the CDC Form 841 has a section where the Reception Center staff document any period of time during the previous incarceration that was not recognized on a previous score sheet. This may include full six-month review periods, a partial review period, or a combination of both. All of this unrecognized time will be updated on the CDC Form 841. In regard to periods of unrecognized time of less than six months, the inmate will receive one-half the number of points for positive behavior. For periods of six months, points will be awarded for positive behavior. Points will always be assessed at full value for serious disciplinary behavior. This process, in effect, "closes out" the prior period of incarceration by granting favorable points for both full review periods and partial review periods. This new process will significantly simplify the system for counseling staff and reduce errors.

The Violent Felon Identification Program staff, prior to implementing the pilot project, decided beforehand not to create a CDC Form 841 for the Readmission Review Period Calculation. Because this was a research project, each score form required a second score form to be prepared as a "research score." Therefore, instead of having the 8 score forms that we used for the pilot project, we would have had 12 score forms. This would have created an undue hardship on field staff and would have been overly complex. Instead, the Readmission Review Period Calculation was included on the CDC Form 840.

When considering the implementation of the new score sheets, however, it was decided that the scoring of the inmates who are returned to prison as Parole Violator and Parole Violator with New Terms will be less confusing if the Readmission Review Period Calculation was included on a separate score form.

Subsection 3375.5(a) is adopted to include language that is consistent with Section 3375.4(a) regarding the "favorable behavior since last review" section. For consistency purposes we have chosen not to deviate from the existing language because this section serves the same purpose as Section 3375.4(a) except it is evaluating only inmates returning to CDC custody.

Subsection 3375.5(b) is adopted to include language that is consistent with Section 3375.4(b) regarding the "unfavorable behavior since last review" section. For consistency purposes we have chosen not to deviate from the existing language because this section serves the same purpose as Section 3375.4(b) except it is referring to parole violators instead of evaluating only inmates returning to CDC custody.

Subsection 3375.5(c) is adopted to define score adjustment. The new score adjustment area was created to account for the total value (whether positive or negative) of all corrections that had to be made on prior score sheets. Instead of the labor-intensive method that is used in the current score system, a new method was created that allows the counseling staff to total the points and enter them in the boxes provided. That score is then included in the total score. The current system requires one correction document to be prepared for each correction. For example, if a correction is made to a score sheet, but five score sheets were prepared since that time, then a total of six correction documents must be prepared. Not only is the current process very time consuming, labor intensive and lends itself to create more errors, these corrections also “change history” in the database. Changing history, in effect, paints a false picture of what occurred at that point in time. The primary purpose of the correction is to record the correct total score for the inmate. The new score adjustment process does that.

Subsection 3375.5 (d) is adopted to define prior preliminary score. The current classification score system provides for one classification score. However, the proposed revisions to the score system uses three scores. The calculated score (or total score based on calculated weights of the variables), a mandatory minimum score and a placement score. For purposes of updating the inmate’s score for reclassification, the beginning score is the prior preliminary score. This score could be the most current calculated score from the CDC Form 839 (preliminary score), the most current calculated score from the CDC Form 840 (new preliminary score) or the most current calculated score from the CDC Form 841 (new preliminary score).

Subsection 3375.5(e) is adopted to define net change in behavior score. The net change in behavior score is the same total as identified in the current regulations CCR 3375.4(c) as recalculation of the classification score. The current CDC Form 840 identifies this recalculation as net change in behavior score also.

Subsection 3375.5(f) is adopted to define the preliminary score subtotal. This line is provided for ease of calculation of the subtotal and requires that the subtotal cannot be less than zero. This subtotal is then added to, or subtracted from, any change in term points. The current score system fails to effectively account for changes to the term points. Because the current system has no subtotal that does not fall below zero, any change in term points may get absorbed by behavior points in the total calculation of the score.

Subsection 3375.5(g) is adopted to define the change in term points. The new point value for each year of difference in the inmate's total term is now two points per year. This rule is made to be consistent with the original base calculation of the value of the inmate's total term on the CDC Form 839.

Subsection 3375.5(h) is adopted to define the new preliminary score. As previously cited, the language is amended to include the new score factor name "New Preliminary Score." This replaces "classification score." "Points" replaces "credits" for the reasons previously cited. In addition, this amendment has included that when a parole violator receives a new term after the Form 841 has

been endorsed, the prior term points shall be given a minus value and combined with the new term points. The difference is the change in term points.

Subsection 3375.5(i) is adopted to define when and how the Mandatory Minimum Score is applied to an inmate's score. The addition of the Mandatory Minimum Score process to the inmate classification score system ensures that the Placement Score for an inmate with specific case factors will never fall below the threshold for the necessarily secure level. In the current classification score system, classification score alone does not dictate the security level to which an inmate will be assigned. Case factors may require placement inconsistent with the inmate's classification score. This is an Administrative Placement ("override" or "out-of-level placement") as described in Section 3375.2. The Mandatory Minimum Score process was tested in the pilot project and found to be effective in reducing the number of Administrative Placement codes applied to the inmates in the pilot project. This new procedure changes the way that some Administrative Placements are characterized, but does not alter the placement of any individual inmate.

Subsection 3375.5(j) is adopted to define the placement score as it relates to an inmate's placement within the Inmate Classification Score System. The placement score will be the score calculated from the inmate's Background Factors and the inmate's Prior Incarceration Behavior unless a Mandatory Minimum Score Factor has been applied that requires placement at a higher security level. The Placement Score will be the score that is used by the endorsing authority to determine an inmate's housing within the Department.

Subsection 3375.5(k) is adopted to include language that is consistent with Section 3375.4(k) regarding the "Classification Staff Representative Action" section. For consistency purposes we have chosen not to deviate from the existing language because this sections serves the same purpose as Section 3375.4(k) except it is referring to parole violators

3377. Facility Security Levels.

Subsection 3377 is amended to replace "classification" level with "security" level. This language is adopted to reflect the current use of "security level" as it relates to the differences in the physical plant of institutions within the department. "Classification level" is not the term used statewide to define levels of security for institutions.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal

management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

PUBLIC COMMENTS:

Public Hearing: Held October 28, 2002 from 9 a.m. to 5 p.m.

Oral comments were received as follows.

Summaries and Responses to Public Comments:

Commenter #1:

Comment A: Commenter contends that the new regulations will "over classify" inmates and create a need for more maximum-security prisons. Commenter also contends that this will justify the Department's building more prisons and hiring more correctional officers to staff those prisons. Commenter contends that the Department currently houses thousands of low security prisoners in more costly high security prisons, that 20% of California's prisoners are housed outside of their classification score and that the new regulations would serve to assign those prisoners a higher classification score.

Accommodation: None.

Response A: The Department contends that the new regulations are not intended to justify a need to build additional higher security level prisons. The changes include new variables that are more closely related to risk of future misconduct in custody as well as a list of Mandatory Minimum Score Factor Codes and Mandatory Minimum Scores associated with the codes. The Department's intent is to improve initial placement of the inmate; ensure appropriate housing; promote safety and security; be fundamentally fair and objective; and to provide clear and consistent criteria for classification procedures.

The results of the pilot project proved that the Mandatory Minimum Score is an effective clarification of selected administrative determinants. An administrative determinant is used to approve certain inmates for placement in a security level commensurate with the inmate's need for supervision but not necessarily consistent with the security level associated with the inmate's classification score. For example, a classification score of 10 is a Level I score, but if the inmate is a sex offender, he or she would not be housed in a Level I minimum setting. The endorsement to a higher security level includes an "override" of SEX as an administrative determinant to justify placement in a security level outside of the inmate's classification score level.

The use of an "override" has been frequently misinterpreted by outside agencies and the public as "over classification."

The change to an inmate's score solely as a result of applying a Mandatory Minimum Score does not affect the placement of those inmates currently incarcerated. If an "override" code was applied to approve an inmate for placement in a security level outside of his classification score, then the new score will not be in conflict with the previously approved security level.

Comment B: Commenter contends that a higher classification score will be assigned to inmates who were young at the time of their first arrest, to inmates who have been determined by staff to be gang members, and to those inmates who are in certain mental health programs. Commenter also contends that inmates with severe mental illness will be assigned high points and placed in higher security prisons. Commenter contends that this is discrimination.

Accommodation: None.

Response B: The Department contends that the results of the pilot project confirmed that an individualized assessment of any proclivity towards future misconduct, that takes [mental illness, age at first arrest, etc.] into account in the mix of factors assessed in the reception center, is an effective predictor of the inmate's subsequent in-custody behavior. Those background factors include Age at First Arrest, Age at Reception, Street Gang Disruptive Group activity, and Mental Illness identified in the reception center. These background factors are evaluated for the assessment of points only when the inmate is received as a new felon commitment. These factors are considered valuable in determining an inmate's initial housing (first placement) in the Department. They appear, therefore, only on the CDC 839, CDC Classification Score Sheet. The CDC 839 is used by the reception center caseworkers to score those inmates who arrive as new felon commitments. Points for these background factors are not retroactively applied to inmates currently housed in the Department.

The results of the pilot project have confirmed that mental illness, as identified in the reception center, is an effective predictor of the inmate's subsequent in-custody misbehavior. None of those pilot project inmates who were assessed points for mental illness in the reception center were denied access to medical care or mental health treatment. Inmates who are determined to be mentally ill are housed in the location most suited to meet their mental health needs consistent with institutional safety and security and protection of the public.

Comment C: Commenter contends that the changes will make it easier to involuntarily transfer inmates to higher security prisons without due process and that the new regulations will restrict the inmates participation in classification committee and restrict their access to classification information. The commenter also contends that the new regulations provide the inmate with neither a notice of committee hearing, nor a copy of the CDC Form 128-G, nor the classification score 72 hours prior to the hearing.

Accommodation: None.

Response C: The Department contends that the changes do not affect the existing due process safeguards for a classification committee hearing. The

inmate will continue to receive written notice at least 72 hours in advance of a hearing which could result in an adverse effect and will continue to receive a copy of the CDC 128-G which records the committee decision. The change made in subsection 3375(f)(5) deletes the requirement that the inmate receive a copy of his or her new classification score sheet at least 72 hours prior to the hearing. The score sheet prepared prior to a committee hearing is, in effect, incomplete. Because the inmate is permitted to contest the preliminary score or placement score in the hearing, the score sheet is not final until all information is gathered and discussed in committee. When the committee action is to refer the case to the Classification Staff Representative or Classification and Parole Representative, the inmate will be provided a copy of the score sheet that records that action upon completion of the decision/endorsement. At the completion of the hearing, if the case does not require referral to the CSR or C&PR, the inmate will be given a copy of the completed score sheet.

Commenter #2:

Comment A: Commenter contends that the new regulations cause inmates to be housed at higher levels, reduces their ability to submit appeals and reduces their due process rights. Commenter also contends that the regulations discriminate against the mentally ill inmates and that they will be isolated. Commenter contends, however, that the changes in the regulations offer some good behavior rewards, extra points, which will positively affect inmates who conform to the prison rules.

Accommodation: None.

Response A: The Department contends that the revised regulations do not cause inmates who are currently incarcerated to be housed at higher levels. Please see Commenter #1 Response A. Inmates have access to the inmate appeal process regardless of their housing and their right to due process remains unaffected. The revised regulations do not isolate mentally ill inmates, nor serve to cause placement in an institution where a commensurate level of mental health treatment is not available. **Please see Commenter #1 Response B.**

Commenter #3:

Comment A: Commenter contends that the new regulations will inappropriately label inmates as gang member or associates just because they come to the Department from a specific part of the state. Commenter contends that an inmate who has tattoos or who talks with other another inmate from his or her hometown will be labeled as a gang member.

Accommodation: None.

Response A: The Department contends that the criteria for determining street gang or disruptive group activity in the new regulations are consistent with the existing regulation language in subsection 3378(c)(8). It was important that the tool used to determine whether or not an inmate has been involved in street gang or disruptive group activity is in harmony with the existing regulations. Contrary to the concern expressed, the region of California from which the inmate comes

to the Department is not used to determine gang activity. Points for street gang or disruptive group activity are applied only when that activity can be established per one of the listed Method of Verification codes in subsection 3375.3(a)(4)(B). The pilot project results established that this score factor, as applied consistent with these regulations, are important in predicting those inmates who demonstrate a greater proclivity for future in-custody misconduct.

Commenter #4:

Comment A: Commenter contends that if an inmate is physically incapable of appearing before a committee that it should not be held in absentia. Commenter also contends that this is in direct contradiction to the Americans with Disabilities Act and that prisoners must be accommodated and must be able to attend all routine hearings.

Accommodation: None.

Response A: Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment B: Commenter contends that adding points solely because a prisoner is in a mental health program is wrong.

Accommodation: None.

Response B: The Department contends that the pilot project results have confirmed that mental illness is an effective predictor of future inmate in-custody misconduct. **Please see Commenter #1 Response B.**

Comment C: Commenter contends that there is neither a formal process nor a clear definition for labeling prisoners as street gang members. Commenter also contends that CDC has admitted that it has no expertise in identifying street gang members.

Accommodation: None.

Response C: The Department contends that the process of identifying and recording gang involvement is documented in existing language in section 3378. Existing section 3000 includes the definition of "gang" as used by the Department. Also, new language includes a definition of "street gang" to be added to section 3000 for further clarification.

Commenter #5:

Comment A: Commenter contends that the application of the Mandatory Minimum Score to an inmate's score will penalize them because they didn't earn those points. The commenter contends that there should not be a minimum score and it shouldn't automatically be assigned to every person. The commenter also contends that it is not fair to penalize lifers who are doing a good

job by adding 19 or 28 points to their score and not allowing them to earn points off lower than those scores.

Accommodation: None.

Response A: The Department contends that the application of a Mandatory Minimum Score to the score of an inmate who is currently incarcerated will serve only replace the "override" code already applied to the inmate's approved security level. Please see Commenter # 1 Response A. The Mandatory Minimum Score that is applied to an inmate's score does not affect the calculation of the score that reflects the inmate's positive and negative behavior. The score that reflects the inmate's behavior will continue to be entered on the score sheet as the Prior Preliminary Score and the New Preliminary Score. These scores include calculations for unfavorable and favorable behavior while incarcerated. Life term inmates are not be penalized by the application of a Mandatory Minimum Score as the score establishes the threshold at which that inmate is eligible to be housed.

Comment B: Commenter contends that the supporting language in the Informative Digest/Policy Statement Overview states that one of the objectives of the new regulations is to establish the use of objective new "variables predictive of inmate proclivity towards future misconduct." Commenter contends that applying a Mandatory Minimum Score to an inmate's classification score does not support this objective. They contend that raising an inmate's score by 19 or 28 points is not predictive of an inmate's proclivity towards future misconduct.

Accommodation: None.

Response B: The Department contends that the language within the Informative Digest/Policy Statement Overview, which lists nine (9) objectives of the new and revised regulations, addresses many issues. Objective #1 states, "To establish the use of objective new variables predictive of inmate proclivity towards future misconduct." This objective does not apply to the Mandatory Minimum Score factor. It is specific only to the "new variables" within the Background Factors section on the CDC Form 839. Objective #3, however, does address the Mandatory Minimum Score Factors. Objective #3 states in part, "To implement

Mandatory Minimum Score Factors to identify permanent and specific case factors precluding inmate placement in lower level housing." The Mandatory Minimum Score is not applied as an indicator or future inmate misconduct.

Commenter #6:

Comment A: Commenter contends that applying points for inmates who are young when first received in the Department is punishment.

Accommodation: None.

Response A: The Department contends that the results of the pilot project have shown that inmates with certain Background Factors demonstrate greater proclivity towards future misconduct while incarcerated. One of those Background Factors is "Age at Reception." **Please see Commenter #1 Response B.**

Comment B: Commenter contends that applying points for inmates who are young will create a need for more prisons with higher security levels.

Accommodation: None.

Response B: The Department contends that there is no evidence to support the claim that applying these new regulations will require more higher security level prisons. **Please see Commenter #1 Response A.**

Commenter #7

Comment A: Commenter contends that the new regulations would hinder an inmate who is paranoid schizophrenic from wanting to participate in a mental health program if he knows that he is going to get extra points. Commenter also contends that he will hide his mental illness and will not get the help that he needs and that this will penalize the inmate.

Accommodation: None.

Response A: The Department contends that there is no evidence to suggest that the Mental Illness variable on the CDC 839 prevents a mental health care professional from correctly diagnosing the inmate's mental illness. Every inmate who is received in the Department is evaluated for mental health needs during reception center processing. In monitoring and evaluating the results of the pilot project, there is no indication that an inmate was overlooked, denied, or misidentified for placement in the Mental Health Services Delivery System as a result of this variable.

Comment B: Commenter contends that applying gang points to an inmate's score over-classifies inmates and moves them into higher security levels.

Accommodation: None.

Response B: The Department contends that the Street Gang/Disruptive Group score factor on the CDC 839 has been shown to be an effective predictor of a greater proclivity towards inmate future in-custody misconduct. **Please see Commenter #1 Response B.**

Comment C: Commenter contends that if a person gives information on an inmate, the Department could move them within 72 hours without a hearing, without defending themselves, and without justifying that the evidence given is accurate.

Accommodation: None.

Response C: The Department contends that Commenter #7 appears to misunderstand the intent of existing language within subsection 3375(f)(1). Existing subsection 3375(f)(1) requires the Department to give an inmate "written notice at least 72 hours in advance of a hearing that could result in an adverse effect." The new language is a change only to the existing language that defines "adverse effect." Changes to existing language within subsection 3375(f)(1)(F) provide further clarification of the definition of adverse effect. Language as modified does not allow the Department to transfer an inmate within 72 hours without prior notice.

Comment D: Commenter contends that life term inmates will have their classification score raised when the Mandatory Minimum Score of 19 is applied. Commenter contends that these life term inmates may have had a zero score, but will have 19 when appearing before the Board of Prison Terms for parole consideration. This will jeopardize any chance that the inmate may have for getting a parole date.

Accommodation: None.

Response D: The Department contends that the application of a Mandatory Minimum Score to an inmate serving a life term serves to ensure appropriate housing commensurate with the inmate's need for supervision. The Board of Prison Terms has been notified of changes to regulations and the significance of the New Preliminary Score in reflecting favorable and unfavorable behavior.

Please see Commenter #5 Response A.

Comment E: Commenter contends that life term inmates, who are currently incarcerated in the Department, will have points added to their scores for "Age at First Arrest," "Mental Illness" and "Street Gang/Disruptive Group" activity. Commenter also contends that the changes have been made to make inmates into Level 3 inmates instead of Level 2 inmates.

Accommodation: None.

Response E: The Department contends that points for Background Factors such as "Age at First Arrest," etc. are applied only to those inmates who are felon new commitments being scored on the CDC 839 in the reception center to determine initial placement. The current inmate population are not re-scored on this score sheet. **Please see Commenter #1 Response B.**

Comment F: Commenter contends that the new regulations eliminate the need to provide a copy of the classification committee hearing chrono, CDC Form 128-G, to the inmate

Accommodation: None.

Response F: The Department contends that there has been no change to the requirement that an inmate be provided a copy of the classification committee hearing chrono, CDC Form 128-G. **Please see Commenter #1 Response C.**

Comment G: Commenter contends that score factors which such as marital status, education background, and military service have been deleted which were previously used to determine good conduct

Accommodation: None.

Response G: The Department contends that the background factors that were eliminated from the CDC 839, CDC Classification Score Sheet, were factors not closely associated with inmate in-custody misconduct. The results of the pilot project confirmed that these background factors do not predict future misconduct in prison and therefore are not effective in evaluating an inmate's initial placement within the Department.

Commenter #8

Comment A: Commenter contends that the changes are not a classification system, but rather a "security placement" and "housing placement" process. Commenter contends that the classification process should release inmates to the community so that they can be law abiding and productive members of the community.

Accommodation: None.

Response A: The Department contends that the changes support the foundation of the classification process as addressed in subsection 3375 Classification Process. Commenter correctly states that the classification score sheets are used as tools to determine an inmate's security level. Subsection 3375(d) states, "The classification of felon inmates shall include the classification score system as established in this article. A lower classification score indicates lesser security control needs and a higher score indicates greater security control needs." Subsection 3375(b) states, "The classification process shall take into consideration the inmate's needs, interests and desires in keeping with the institution's/facility's needs; the inmate's behavior; performance and classification score; and the effect on the inmate, other inmates, staff, security of the facility, and public safety." The changes to the CDC Form 839 include score factors that are more closely associated to predicting risk of future inmate misconduct in-custody. The inmate's placement score is a valuable indicator of the inmate's appropriate security level placement. The Placement Score is only a part of the overall inmate classification process.

Comment B: Commenter contends that the score factor of "Age at First Arrest" should not be used. Commenter contends that it is highly unfair. The arrest doesn't mean there is necessarily a finding that the person actually did that for which they were arrested. To include a juvenile arrest seems more than just a bit of a stretch.

Accommodation: None.

Response B: The Department contends that the score factor for applying points for an inmate's Age at First Arrest is a valuable predictor of the inmate's propensity for future misconduct in-custody. The pilot project results establish that the younger the inmate was when first arrested, the more likely he or she is to become involved in serious inmate misconduct in prison. This score factor is considered only for initial placement. Inmates are considered for a reduction in scores over time for demonstrated disciplinary free behavior and positive programming.

Comment C: Commenter contends that the changes will raise the classification levels and will require more "Delano 2"s. (The name used to identify an institution proposed to be built near Delano, California expected to be a Level IV institution.)

Accommodation: None.

Response C: The Department contends that there is no evidence that scoring new commitment inmates on the revised CDC Form 839 requires more Level IV prisons. **Please see Commenter #1 Response A.**

Commenter #9:

Comment A: Commenter contends that the changes to the classification score system are punitive and shortsighted.

Accommodation: None.

Response A: The Department contends that the changes establish clear and objective criteria to assist staff in objectively determining initial inmate placement consistent with safety and security. **Please see Commenter #1 Response B.**

Commenter #10:

Comment A: Commenter contends that the new regulation that imposes a Mandatory Minimum Score for certain case factors is unfair. If the Mandatory Minimum Score points are assessed for notoriety, the inmate in many cases has no control over whether his case is called notoriety. If an editor took a particular interest in what the inmate did at the time that he was committed, if the victim happens to be someone of interest, or if the offender happens to have a name or be the son of someone prominent, that case is going to be one that the news is going to play.

Accommodation: None.

Response A: The Department contends that the application of a Mandatory Minimum Score to a case designated as "high notoriety" is consistent with existing regulations. The administrative determinant of PUB as listed in subsection 3375.2(a) states in part, "An inmate meeting one or more of the following administrative or irregular placement conditions, known as administrative determinants, may be housed in a facility with a *security* level which is not consistent with the inmate's *placement* score." (Italics indicate revised terms in regulation language). The administrative determinant of "high notoriety" is identified in existing regulatory language in section 3000 and subsection 3375.2(b)(20) "PUB. High notoriety of an inmate has caused public interest in the case and requires exceptional placement."

At issue is that a high notoriety inmate requires a commensurate level of supervision which may supersede the Preliminary Score. The MMSF thus establishes the lowest placement score for inmates identified to be a significant escape risk due to the unusual level of public panic that his or her escape could likely cause.

Comment B: Commenter contends that the assignment of a Mandatory Minimum Score to an inmate currently serving a life term will deprive those inmates of any hope in terms of day to day living and deprive them of the programming that goes on in the institution. Commenter contends that those life term inmates will be concentrated in a few institutions and cannot earn their way into other institutions. This will not allow the lifers to be stabilizing influences on other inmates.

Accommodation: None.

Response B: The application of the Mandatory Minimum Score of 19 for most life term inmates does not affect the inmate's access to programs or program

opportunity. Life term inmates whose classification score is not commensurate with the security level are already endorsed to institutions with an "override" code. The Mandatory Minimum Score replaces the override code and does not change in the placement of inmates already in custody. **Please see Commenter #5 Response A.**

Comment C: Commenter contends that no one should have his classification affected by the fact that he is mentally ill. It is much better to treat a mentally ill person in a relatively open environment rather than one that is confined. This new change is based on institutional convenience rather than on public safety.

Accommodation: None.

Response C: The Department contends that the results of the pilot project have confirmed that an inmate's mental illness, as identified in the reception center, is an effective predictor or subsequent in-custody misconduct. Inmates in the Mental Health Services Delivery System are not denied access to medical or mental health treatment due to the added points. **Please see Commenter #1 Response B.**

Commenter #11:

Comment A: Commenter contends that the new regulatory language for the Background Factors on the revised CDC Form 839 are unfair and penalize inmates.

Accommodation: None.

Response A: The Department contends that the results of the pilot project have shown that inmates with certain background factors demonstrate a greater propensity for serious misconduct or violent behaviors while incarcerated. The revisions to the CDC Form 839 meet a fundamental objective of the inmate classification score system in that the new variables effectively predict inmate proclivity towards future misconduct. This allows the Department to manage the inmate population to promote the safety and security of staff, inmates, and the public.

WRITTEN COMMENTS

Summaries and Responses to Written Comments:

Commenter #12:

Comment A: Commenter contends that the new revised language in subsection 3377 is incomplete and needs additional language to more clearly describe the physical plant of each security level. Commenter is recommending additional language of "celled housing" for Levels III and IV and "lethal electrified fence" for Levels II, III, and IV.

Accommodation: None.

Response A: The Department agrees that the suggested language by Commenter #12 more clearly describes the physical plant of security levels II, III, and IV and the Department will pursue incorporating these changes into a future regulatory amendment.

Commenter #13:

Comment A: Commenter contends that the new language in subsection 3375.5(b)(5) is erroneous and inappropriately describes an inmate's possession of a small amount of drugs within an institution as "personal use." Commenter contends that there is no such thing as "personal use" of controlled substance in a correctional setting. The Penal Code makes it clear that it is a felony to possess any amount in a correctional setting. Health and Safety Code 11350-11377 describes the penalties for possession of various controlled substances. Commenter also contends that this new language needs to be deleted as it violates the law and will create extensive appeals. Commenter recommends that if this language is not deleted that CDC Legal Affairs should review it.

Accommodation: None.

Response A: The Department contends that the language for this new subsection of the regulations was copied directly from existing language in 3375.3 and 3375.4 as it addresses the criteria for applying unfavorable points for distribution of drugs (trafficking narcotics). The existing language in sections 3375.3 and 3375.4 explains the circumstances under which an inmate is to be given unfavorable points on the CDC 839 and CDC 840 when the inmate is found guilty of distribution of drugs in a correctional setting. When regulations were written for the new score sheet, the CDC Form 841, existing language was used to describe the application of unfavorable points this same offense.

Commenter #14

Comment A: Commenter contends that the language in subsection 3375.2(b)(25) that describes the criteria for applying the administrative determinant for violence (VIO) is unfair. Commenter contends that it is wrong to consider a prior conviction for a violent felony as criteria for applying VIO. This precludes an inmate from placement in a Minimum Support Facility (MSF) even though the inmate may have previously programmed positively within an MSF and/or camp setting after that prior conviction.

Accommodation: None.

Response A: The Department contends that the regulation language objected to is existing language; therefore, although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. Changes to existing language are non-substantive in changing *classification* to *security* level and *classification* to *placement* score.

Comment B: Commenter contends that it is unclear whether or not an administrative determinant of VIO would apply to inmates currently incarcerated.

Accommodation: None.

Response B: The Department contends that the criteria for the administrative determinant of VIO is existing language and applies to inmates currently incarcerated. The inmate who meets the criteria for the application of an administrative determinant for violence is also evaluated for the application of a Mandatory Minimum Score.

Commenter #15

Comment A: Commenter contends that the regulations are vague. The new regulations provide no procedural protections for prisoners who will be classified as affiliates of "street gangs/disruptive groups." Commenter contends that the new regulations have all the attendant dangers for arbitrary and capricious classification of inmates as affiliates of "street gangs and disruptive groups."

Accommodation: None.

Response A: The Department contends that the new regulations identify an inmate's prior street gang activity for purposes of applying six points on the CDC Form 839. The new regulations are not established as a means to identify an "affiliate" of a street gang or disruptive group. The departmental gang validation process, which includes validating an inmate as an "affiliate," is described in part in subsection 3378 of the existing regulations.

During the reception center process, information regarding an inmate's gang activity is gathered by a Correctional Counselor, recorded on the CDC Form 812, and referred to a gang coordinator/investigator for follow-up. Subsection 3378(c) states that gang involvement allegations shall be investigated by a gang coordinator/investigator or their designee. An inmate may or may not then be identified by the gang coordinator as a member, associate, or a dropout of a gang (prison gang or disruptive group). The "validation process" conducted by the law enforcement and investigations unit (LEIU) is a separate process from the counselor's identification of the inmate's involvement in street gang or disruptive group activity for purposes of applying 6 points on the CDC Form 839.

The new language per subsection 3375.3(a)(4) states in part that, "for the purpose of preliminary score evaluation, if there is information that the inmate is or has been *involved in gang activity*, enter 6 points in Box 35." The caseworker completing the score sheet does not determine gang affiliation, only gang activity. **Please see also Commenter #4 Response B.**

The new regulations include a Method of Verification Code list in subsection 3375.3(a)(4)(B) to establish the criteria that must be used by the caseworker in identifying the inmate as being involved in street gang activity. The Method of Verification Code criteria is the same as the existing language in subsection 3378(b)(8).

Points for street gang activity cannot be applied unless one of the Method of Verification Codes is recorded on the score sheet. This assures that the caseworker has used specific criteria to identify street gang activity.

Comment B: Commenter contends that it is troubling that the Department authorizes Correctional Counselors to determine whether the prisoner is involved in "gang activity." There is no requirement that the Correctional Counselors have

any specific training in the identification and history of gangs and their affiliates. Also, commenter contends that Correctional Counselors do not work in the field of operations within the prisons.

Accommodation: None.

Response B: The Department contends that Correctional Counselors, per the existing regulations, are required to evaluate all inmate case factor information. Subsection 3378(a) Critical Case Information, states in part, "any information regarding an inmate/parolee which is or may be critical to the safety of persons inside or outside an institution shall be documented as required below on a CDC Form 812 (Rev. 8/01), Notice of Critical Case Information-Safety of Persons (Non-confidential enemies). The CDC Form 812 is one of the documents initiated and prepared by the Correctional Counselor at the reception center. It includes an area to record suspected gang affiliation whether it is prison gang or disruptive group affiliation.

The Correctional Counselor is responsible to complete the CDC Form 839 pursuant to subsection 3375(j)(1), which states in part, "all relevant documents available during the reception center process shall be reviewed, the inmate shall be interviewed, informed of the purpose of the form, and be allowed to contest specific item scores and other case factors on the form. Factors for which documentation is absent or conflicting shall be discussed during the interview. Subsection 3375(j)(2) states that the inmate is responsible for providing documentation to support their challenge of any information on the CDC Form 839. Subsection 3375(j)(3) states in part, "An effort shall be made to obtain verifiable documentation of all items on the CDC Form 839. The probation officer's report (POR) shall be the document of choice to resolve any conflicting information received."

Subsection 3375(b) states in part, "The classification of felon inmates shall include the classification score system as established in this article." Subsection 3375(c) states, "Each determination affecting an inmate's placement within a institution/facility, transfer between facilities, program participation, privilege groups, or custody designation shall be made by a classification committee composed of staff knowledgeable in the classification process." Any inmate that disagrees with the Correctional Counselor's application of six points for gang activity on his or her CDC Form 839 can contest the classification score in the classification committee hearing per subsection 3375(f)(5).

Comment C: Commenter contends that the Department incorporates the term "gang activity" without giving a definition of the term.

Accommodation: None.

Response C: The Department contends that the new regulations have added the definition of street gang in subsection 3000. That definition is included in the Notice of Change to Director's Rules Number 02/09 and states, "Street gang refers to a gang as defined herein except that it is not a prison gang." Existing regulation language in section 3000 also includes definitions for gang, disruptive group, and prison gang. The meaning of the word "activity" is per dictionary

definition. As noted in Response A, a Method of Verification Code must be applied when recording an inmate's involvement in gang activity

Comment D: Commenter contends that the Department will now classify Hispanic inmates as affiliates of a "disruptive group" because they are either from northern or southern California. There needs to be caution so as to not create a vacuum that would arbitrarily misclassify prisoners of any racial group as being an affiliate of a "disruptive group."

Accommodation: None.

Response D: The Department contends that the new regulations do not identify an inmate as being involved in "disruptive group" activity solely because an inmate is from the northern or southern part of the state. Neither is there any provision to identify an inmate as being involved in "disruptive group" activity solely because of an inmate's race, ethnicity or place of birth. There are hundreds of street gangs and disruptive groups throughout California. The codes listed in the new regulations are meant to sort these many gangs into a few groups for purposes of meaningful identification. These groupings are by types of gangs not by types of races or by areas in California.

Commenter #16

Comment A: Commenter is requesting clarification regarding implementation of the changes to regulations. Commenter is concerned that the Background Factors on the CDC Form 839 may be retroactively applied to the current inmate population.

Accommodation: None.

Response A: The Department has made changes to the Background Factors section on the CDC 839. These factors are not retroactively applied to the current inmate population. The revised CDC Form 839, with new and revised Background Factors, are used for an inmate whose score sheet is prepared on or after October 15, 2002.

Commenter #17

Comment A: Commenter contends that the public comment date of October 28, 2002 is a farce and a sham because the changes to the regulations governing the inmate classification score system have been implemented effective October 15, 2002.

Accommodation: None.

Response A: The Department contends that the California Penal Code per section 5058 authorizes the Director of Corrections to certify with the Office of Administrative Law that operational needs of the department require adoption of the regulations on an emergency basis. Section 5058 of the Penal Code also states in part, "It is the intent of the Legislature to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require." The Department met these requirements prior to implementation of the new regulations.

Comment B: Commenter contends that it is wrong to apply a Mandatory Minimum Score of 52 to the score of an inmate who is serving a term of Life Without the possibility of Parole (LWOP). It is wrong because this is the same score that is applied to an inmate who is Condemned and housed on Death Row in San Quentin.

Accommodation: None.

Response B: The Department contends that the Mandatory Minimum Score of 52 is applied to an inmate who has been sentenced to LWOP because, absent approval from the Departmental Review Board (DRB), the inmate shall be housed as a Level IV inmate in compliance with existing CCR Section 3375.2(a)(6).

Comment C: Commenter contends that the changes to the regulations governing the score system is flawed in its purpose. It prevents young inmates with sentences of 25 years to Life from being placed in a lower level than Level IV at initial placement. The changes to score system do not take into account whether or not an inmate has been disciplinary free for several years in the county jail. With the new term point calculation, that inmate could be placed as a Level III inmate, but because of the points assessed for the inmate's Age at Reception, the inmate cannot be considered for less than Level IV housing at initial placement.

Accommodation: None.

Response C: The Department contends that under the old system, an inmate serving 25 years to Life, would be initially housed in Level IV based solely on term points alone, no matter how old the inmate was. The maximum number of term points assigned under the old system was 59.

Under the revised regulations, the maximum term points are reduced to 50, which is a Level III score. An inmate serving a sentence of 25 to Life may be housed in a Level III institution at initial placement, absent other background factors that require a score. This would not have been possible under the old system.

Comment D: Commenter contends that there is no legitimate penological interest in implementing these changes to the regulations. It only serves to make all prisoners seem more dangerous and in need of more security than is the genuine case.

Accommodation: None.

Response D: The Department contends that as stated in the Notice of Change to Director's Rules Number 02/09 issued September 6, 2002, within the Informative Digest/Policy Statement Overview, the California State Legislature directed the Department to evaluate the effectiveness of the inmate classification score system. A pilot project to test changes to the score system was begun in November 1, 1998 that involved over 20,000 inmates. New background factors and changes to existing factors were tested using a revised CDC Form 839. Results of the pilot project validated that the new background factors on the CDC Form 839 were more predictive of future inmate in-custody misconduct. Based

on the results of the pilot project, the Department has sufficient information to substantiate the need for the regulatory changes to the Inmate Classification Score System.

Comment E: Commenter contends that the changes to the regulations should be withdrawn per the purpose of departmental policy as stated in DOM 62010.5.

Accommodation: None.

Response E: The Department contends that the departmental policy as stated in the cited DOM section is not in conflict with the changes. This section states in part, "The classification scoring system provides a standard evaluation for placement of inmates at the least restrictive institution, commensurate with their custodial requirements." It also states, "Inmates are placed in institutions...and they are encouraged with positive incentives to reduce their scores to permit transfer from higher custody facilities to those which have increased privileges, movement and programming." **Please see Commenter #5 Response A.** Nothing in this section is in conflict with the changes to the regulations.

Commenter #18:

Comment A: Commenter contends that the changes to the regulations governing the CDC Form 839 should not be adopted as some inmates will be scored and placed according to the old CDC Form 839 and some inmates will be scored and placed according to the revised CDC Form 839. Commenter contends that this violates "equal protection."

Accommodation: None.

Response A: The Department contends that the changes to the inmate classification score system are not in violation of the US Constitution. Penal Code Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates. Penal Code Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons. It is not deemed necessary to convert the placement scores of inmates already in CDC to apply predictive variables identified on the revised CDC 839. Information on the inmates in CDC custody is already documented and tracked for purposes of determining the appropriateness of the inmate's current placement. The changes to the revised CDC 839 assist staff in establishing appropriate initial placement for new felon admissions received into CDC with little documented information on behavior in custody.

Comment B: Commenter objects to the language and requirements in subsection 3375(j)(3).

Accommodation: None.

Response B: The Department contends that this is existing language. Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or

personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment C: Commenter objects to the language in subsection 3375(j)(2). Commenter contends that inmates should not leave the reception center without having an archive file review conducted.

Accommodation: None.

Response C: The Department contends that this is existing language. Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment D: Commenter contends that the old CDC Form 839 cannot be corrected using the revised CDC Form 839.

Accommodation: None.

Response D: The Department contends that the new score sheets will be able to correct the old score forms. The database will accept the corrections to the old score forms by using the new forms. The new database updates all inmate scores with based on data collected on the new forms.

Comment E: Commenter contends that applying points based on the inmate's Age at First Arrest is discrimination.

Accommodation: None.

Response E: The Department contends that the pilot project results confirmed that the variable on the CDC Form 839 for Age at First Arrest is a valuable predictor of the inmate's propensity for future in-custody misconduct. **Please see Commenter #8 Response B and Commenter #11 Response A.**

Comment F: Commenter contends that applying points based on the inmate's Age at Reception is discrimination.

Accommodation: None.

Response F: The Department contends that the pilot project results confirmed that the variable on the CDC Form 839 for Age at Reception is a valuable predictor of the inmate's propensity for future in-custody misconduct. **Please see Commenter #6 Response A and Commenter #11 Response A.**

Comment G: The Commenter contends that the length of the inmate's sentence should not be used in the calculation of the inmate's points for Background Factors on the CDC Form 839.

Accommodation: None.

Response G: The Department contends that the variable for Term in Years, also used on the old CDC Form 839, is an important background factor. **Please see Commenter #17 Response C.**

Comment H: Commenter contends that points assessed for Prior Jail or County Juvenile sentences and Prior Incarcerations is unfair and double jeopardy. It appears to be a means to keep some inmates in higher-level prisons.

Accommodation: None.

Response H: The Department contends that the results of the pilot project found that these case factors are important part of an inmate's score. **Please see Commenter #11 Response A.**

Comment I: Commenter contends that the Mandatory Minimum Score seems redundant. Administrative Determinants, as addressed in subsection 3375.2, already keep inmates in higher security levels than their classification scores.

Accommodation: None.

Response I: The Department contends that the Mandatory Minimum Score is an effective replacement of selected administrative determinants used to identify specific and permanent case factors which require consideration for placement commensurate with the inmate's risk to public safety. **Please see Commenter #1 Response A.**

Comment J: Commenter contends that the changes to the regulations are not emergency in nature and that the changes should not be implemented.

Accommodation: None.

Response J: The Department contends that the changes are approved as emergency regulations pursuant to PC 5058. **Please see Commenter #17 Response A.**

Commenter #19

Comment A: Commenter contends that using the score factor of Age at First Arrest is not a good indicator of how the person will perform in prison. An arrest does not indicate that there was any actual criminal conduct by the minor. Also Age at First Arrest does not take into consideration what type of crime the person was arrested for. The changes to the regulations are unnecessarily harsh on youths and placing them at higher levels will be a self-fulfilling prophecy. They will become more dangerous to other inmates and to society.

Accommodation: None.

Response A: The Department contends that the score factor for an inmate's Age at First Arrest is a valuable predictor of the inmate's propensity for future misconduct. **Please see Commenter #8 Response B.**

Commenter #20

Comment A: Commenter contends that, with the application of the Mandatory Minimum Score Factors, an inmate serving Life Without the Possibility of Parole (LWO) will automatically become a Level IV inmate even if he is housed in a Level III prison. The inmate will be forced to transfer to a Level IV institution. If the inmate is allowed to remain in Level III, it will still require an "override" code for that LWO inmate to remain in Level III. This only substitutes one "override" code for another one.

Accommodation: None.

Response A: The Department contends that the application of a Mandatory Minimum Score does not require transfer of an inmate who is LWO from Level III to a Level IV. A LWO inmate, currently housed in a Level III institution as a result of Departmental Review Board (DRB) approval has been approved to remain at that Level III facility until referred back to the DRB for alternate housing. The LWO inmate is not referred for transfer to a Level IV institution solely as a result of the application of the Mandatory Minimum Score of 52 for LWO. Commenter is correct in stating that, for this inmate to remain in Level III housing, an "override" code of *DEP* is needed to justify placement. **Please also see Commenter #1 Response A.**

Commenter #21

Comment A: Commenter contends that the changes are prejudiced against inmates with disabilities. Even if an inmate is physically incapable of appearing at a classification committee hearing, the hearing will be held without the inmate.

Accommodation: None.

Response A: The Department contends that subsection 3375(f)(3)(B) is existing language and not included in the changes to the regulations. Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment B: Commenter contends that the changes are prejudiced against the mentally ill. It penalizes inmates with more points because they may have mental health issues. How can staff that are not properly trained override a medical decision or make any decisions regarding an inmate's mental health?

Accommodation: None.

Response B: The Department contends that the results of the pilot project confirm that mental illness, as identified in the reception center, is an effective predictor of the propensity toward subsequent in-custody misbehavior. Pilot project inmates who were assessed points for mental illness in the reception center were provided/ensured access to medical care or mental health treatment. Points are applied based only on the evaluation and diagnosis of a mental health professional. A Correctional Counselor does not have authority to "override" a medical decision. Inmates who are determined to need mental health treatment are housed in the institution most suited to meet their mental health level of care consistent with institutional safety and security and protection of the public.

Comment C: Commenter contends that Correctional Counselors have no expertise in the area of gang labels and will need special training to determine if an inmate is in a gang.

Accommodation: None.

Response C: The Department contends that pursuant to current regulations, the Correctional Counselor is responsible to complete the CDC Form 839 by reviewing and evaluating all inmate case factor information. **Please see Commenter #15 Response B.**

Commenter #22

Comment A: Commenter contends that the changes will enhance the trend of "over classifying" inmates and will move prisoners into higher security prisons. This will provide justification for the Department to build more high security/max and supermax prisons.

Accommodation: None.

Response A: The Department contends that it is the intent of CDC to ensure placement in the least restrictive level of security commensurate with the inmate's need for supervision. Placement of inmates currently in CDC shall not be changed solely on the basis of the new regulations. **Please see Commenter #1 Response A.**

Comment B: Commenter contends that the Department should not focus on predicting an inmate's potential for future misconduct. Predicting misconduct is not the only purpose of classification and attempting to predict violence can actually increase the odds there will be misconduct and/or violence.

Accommodation: None.

Response B: The Department contends that predicting the potential for future misconduct in custody is a fundamental goal of the inmate classification score system. **Please see Commenter #8 Response A.**

Comment C: Commenter contends that the changes to the regulations cited in subsection 3375(f)(1)(F) serves to permit involuntary transfer of prisoners because of receipt of new information about the prisoner, regardless of Placement Score. This is a restriction of due process.

Accommodation: None.

Response C: The Department contends that there appears to be a misunderstanding of the intent of the change to the language in the subsection cited. **Please see Commenter #7 Response C:**

Comment D: Commenter contends that, based on some of the changes to regulations in subsection 3375(g), an inmate will be deprived of due process and the ability to take part in the process that determines his or her classification level. The date of the inmate's next review or committee hearing or release date will no longer be documented on the CDC Form 128-G. The CDC 128-G is a document that the inmate keeps and is a way to help the inmate hold the prison accountable for following its own procedures in a timely fashion. Also, inmates will no longer be provided with a copy of the score sheet 72 hours prior to the committee hearing. These changes are a violation of due process.

Accommodation: None.

Response D: The Department contends that the changes to regulation language, regarding the content of the CDC 128-G, do not affect the inmate's right to due process. The inmate's "liberty interest" is not affected by the change of information documented on the CDC 128-G. The Department contends that the inmate shall continue to be able to participate in the classification process, be present in the committee hearing, and have an opportunity to express his or her opinion as part of the classification committee review. He or she shall also continue to receive a copy of the CDC 128-G. Information no longer required on the CDC 128-G is already provided to the inmate in other forms and shall no longer be required to be reiterated on the CDC 128-G. An inmate's release date is located on the Legal Status Summary and a copy is provided to the inmate regularly by Case Records staff. The next anticipated Board of Prison Terms hearing date is located on documents prepared by the Board of Prison Terms. Copies are provided to the inmate.

Also, an inmate's knowledge of his or her next scheduled committee hearing is not prevented or diminished by revised language deleting requirement for certain information on the CDC 128-G. The revised language to subsection 3375(f)(5) deletes the requirement that the inmate receive a copy of his or her draft classification score sheet at least 72 hours prior to the hearing. The score sheet drafted by the caseworker is a working document and is, in effect, incomplete. The CDC further contends that accountability for compliance with procedures is not limited to documentation of the CDC 128-G. The inmate receives a copy of all non-confidential documents prepared regarding his/her credit earning status, projected release date, and aspects of his/her placement. **Please see Commenter #1 Response C.**

Comment D: Commenter contends that mental illness is not a predictor of increased likelihood of misconduct or violence. Adding points for Mental Illness and transferring them to a higher security level will result in their not receiving treatment and access to rehabilitation programs.

Accommodation: None.

Response D: The Department contends that the results of the pilot project establish that a diagnosis of mental illness level of care in the reception center is closely related to a greater proclivity towards future misconduct. **Please see Commenter # 1 Response B.**

Comment E: Commenter contends that one's youth will lead to higher scores and higher security placement. Commenter also contends that according to CDC, the results of the pilot project have concluded: "the younger the inmate, the higher the risk of future in-custody misconduct." This is an erroneous conclusion and is a self-fulfilling prophecy. If youths are placed in surroundings where they will be treated with respect, placed in educational and training programs where they can take part in age-appropriate learning opportunities, and be properly supervised, they will be much less likely to violate rules and be involved in violent incidents.

Accommodation: None.

Response E: The Department contends that the pilot project results have shown that the background factors of Age at Reception and Age at First Arrest are closely associated with greater proclivity towards future in-custody misconduct. Inmates who are young when first arrested and/or young when first received in the Department are more likely to become involved in serious misbehavior in prison. Changes to regulations do not affect the inmate's access to program opportunities and appropriate levels of supervision. **Please see Commenter #1 Response B.**

Comment F: Commenter contends that using Street Gang/Disruptive Group activity as a score factor is problematic and that racism will play a part in determining gang affiliation. Also, there is no definition of what constitutes membership or activity in a street gang.

Accommodation: None.

Response F: The Department contends that the Background Factor for Street Gang/Disruptive Group activity is closely related to demonstrating greater proclivity towards future in-custody misconduct. The criteria for determining street gang or disruptive group activity in the changes are consistent with the existing regulation language in subsection 33788(c)(8). **Please see Commenter #3 Response A and Commenter #15 Response C.**

Commenter #23

Comment A: Commenter contends that the changes to the regulations are meant to punish inmates who are mentally ill, young, involved in gang activity, or have a disability.

Accommodation: None.

Response A: The Department contends that the results of the pilot project have shown that inmates with certain background factors demonstrate greater proclivity towards future misconduct while incarcerated. Points are not assessed for an inmate solely because the inmate is diagnosed with a physical disability. **Please see Commenter #1 Response B.**

Commenter #24

Comment A: Commenter contends that a Life Term inmate, who is currently housed at Folsom State Prison as a Level II inmate, may be moved to a Level III prison when the Mandatory Minimum Score Factor Code of "C" for 28 points is applied. The inmate will then have a Level III score and will have to be transferred from Level II to Level III.

Accommodation: None.

Response A: The Department contends that when a Mandatory Minimum Score is applied to an inmate who is currently incarcerated, that the inmate's current placement is not changed solely because a Mandatory Minimum Score is applied. The Mandatory Minimum Score of 28 is applied only to those Life Term inmates who meet the criteria for placement no lower than Level III housing per 3375.2(a)(7). In the case cited above, if the Lifer was last endorsed to Folsom Level II, he does not meet the criteria for the Mandatory Minimum Score of 28. It

is likely that he would have a Placement Score of 19 based on the MMSF of F-Violence or H- Other Life which otherwise makes placement in FSP II commensurate with his Placement Score. **Please see Commenter #1 Response A.**

Commenter #25

Comment A: Commenter contends that the changes to the regulations will over classify inmates and create a need for more maximum security prisons by assigning inmates higher classification scores.

Accommodation: None.

Response A: The Department contends that the application of a Mandatory Minimum Score does not affect the inmate's last approved placement. **Please see Commenter #1 Response A.**

Comment B: Commenter contends that a higher classification score will be assigned to inmates who were young at the time of their first arrest, who are involved in gang activity, and who are mentally ill. Gang points will be applied against people of color and those inmates who are in mental health programs will be placed in higher security prisons. This will only make the problem worse.

Accommodation: None.

Response B: The Department contends that the results of the pilot project confirm that inmates with specific background factors demonstrate greater proclivity towards misconduct while incarcerated. Street gang points are not based on race or ethnicity of an inmate. Inmates with mental health needs shall continue to be housed in facilities providing commensurate levels of care. **Please see Commenter #1 Response B.**

Comment C: Commenter contends that the changes will make it easier to involuntarily transfer inmates to higher security prisons without due process based on "new information." The new regulations will restrict the inmate's participation in classification committee and restrict their access to classification information. The commenter also contends that the new regulations no longer provide the inmate with a copy of the CDC 128-G nor provide a copy of the score sheet 72 hours prior to the committee hearing.

Accommodation: None.

Response C: The Department contends that the changes do not impinge on the right to due process for a classification hearing. **Please see Commenter #1 Response C.**

Commenter #26

Comment A: Commenter contends that the changes in regulations restrict an inmate's ability to engage in programs leading to release and successful assimilation in the community upon release. The attempt to predict inmate misconduct is self-fulfilling and no due process is allowed.

Accommodation: None.

Response A: The Department contends that the changes to the regulations do not change access and availability of programming within the institutions. Inmates who are scored according to the score factors on the revised CDC Form 839 are housed in the appropriate security level, taking into consideration the inmate's Placement Score and critical case factors. Each security level provides access to a scope of educational, vocational, and self-help programs, including preparation for parole. Moreover, inmates are eligible to reduce their Preliminary Score based on disciplinary free behavior, positive programming and minimum custody placement. Conforming inmates are thus eligible for placement in less restrictive housing and access to greater range of program availability.

Commenter #27

Comment A: Commenter contends that the changes to the regulations are likely to significantly increase the levels of violence within the prison system and increase the need to build more unnecessary maximum-security prisons. These changes will result in more inmates being placed in higher levels of security at a higher cost.

Accommodation: None.

Response A: The Department contends that changes do not require more higher security level prisons. **Please see Commenter #1 Response A.**

Comment B: Commenter contends that the changes within subsection 3375(f)(1)(F) make it easier to transfer prisoners to other facilities involuntarily because of receipt of new information. This restricts due process.

Accommodation: None.

Response B: The Department contends that Commenter #27 seems to misunderstand the intent of the existing language within subsection 3375(f)(1) and the changes. **Please see Commenter #7 Response C.**

Comment C: Commenter contends that the changes in subsection 3375(g) will deprive the inmates of due process. The CDC 128-G, which records the committee hearing, will no longer include the date of the inmate's next review or release date. Inmates will no longer receive a copy of the score sheet 72 hours prior to the hearing. This makes it more difficult to keep track of and take part in the process that determines his or her classification level.

Accommodation: None.

Response C: The Department contends that the changes within subsection 3375(g) do not impinge on the inmate's right to due process. **Please see Commenter #22 Response D.**

Comment D: Commenter contends that the changes discriminate against the mentally ill inmates. In fact, people with mental illness are no more prone to misconduct and violence than are other who do not suffer from serious mental illness. Placing this type of inmate at a higher security level will make him or her less likely to have available treatment and rehabilitation programs.

Accommodation: None.

Response D: The Department contends that the results of the pilot project show that inmates who are diagnosed in the reception center as mentally ill demonstrate greater proclivity towards future misconduct while incarcerated. **Please see Commenter #21 Comment B.**

Commenter #28

Comment A: Commenter contends that subsection 3375(f)(3)(B) is in direct contradiction to the Americans with Disabilities Act. Inmates who have disabilities must be accommodated and be able to attend all routine hearings.

Accommodation: None.

Response A: The Department contends that the language within this subsection is existing language. Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment B: Commenter contends that the revised language in subsection 3375(g)(4)(B) indicates that a mentally ill inmate who is decompensating can be retained in segregation. Commenter contends that this is an outrage and that custody staff should not override a medical decision in such an acute situation.

Accommodation: None.

Response B: The Department contends that revised language incorporates procedures to ensure that the mental health condition of the inmate and the committee's decision are documented on the CDC 128-G. This subsection describes the information that must be documented on the CDC 128-G in cases that involve mentally ill inmates. This subsection does not authorize custody staff to arbitrarily override medical decisions, but provides the process for documenting issues taken into consideration involving mentally ill inmates.

Comment C: Commenter contends that applying points to an inmate who is mentally ill is wrong and expresses the Department's prejudice against the mentally ill.

Accommodation: None.

Response C: The Department contends that the score factor for Mental Illness diagnosed in the reception center demonstrates the inmate's proclivity towards future in-custody misconduct. **Please see Commenter #10 Response C.**

Comment D: Commenter contends that the use of Street Gang/Disruptive Group activity to assess points is flawed. Commenter contends that the Correctional Counselors who are required to assign points for street gang membership have no training or expertise in these matters.

Accommodation: None.

Response D: The Department contends that Correctional Counselors, per the existing regulations, are required to evaluate all inmate case factor information. **Please see Commenter #15 Response B:**

Comment E: Commenter contends that there is no clear definition of what constitutes membership or activity in a street gang. There is no definition of what constitutes a gang or what an "other" gang might be.

Accommodation: None.

Response E: The Department contends that the new regulations have added the definition of street gang in subsection 3000. The code for "Other" will be used on the CDC Form 839 when the inmate's street gang/disruptive group type is not included on the list. **Please see Commenter #15 Response C.**

Comment F: Commenter contends that grouping Hispanic inmates based on where they live is unfair and has overtones of racism.

Accommodation: None.

Response F: The Department contends that the new regulations do not identify an inmate as being involved in a street gang or disruptive group based solely on the inmate's prior residence. **Please see Commenter #15 Response D.**

**ADDENDUM TO FINAL STATEMENT OF REASONS / SUMMARY
OF RESPONSES:**

The following are the initial summaries and responses to Comment #4A and #28A:

Commenter #4:

Comment A: Commenter contends that if an inmate is physically incapable of appearing before a committee that it should not be held in absentia. Commenter also contends that this is in direct contradiction to the Americans with Disabilities Act and that prisoners must be accommodated and must be able to attend all routine hearings.

Accommodation: None.

Response A: Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Commenter #28

Comment A: Commenter contends that subsection 3375(f)(3)(B) is in direct contradiction to the Americans with Disabilities Act. Inmates who have disabilities must be accommodated and be able to attend all routine hearings.

Accommodation: None.

Response A: The Department contends that the language within this subsection is existing language. Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

The amended Department response to both comments is as follows:

The commenters concern is with existing regulatory language of Subsection 3375(f)(3)(B) unchanged by this proposal and is outside the scope of this regulatory action. This section provides for *in absentia* hearings to be held if inmates are physically incapable of appearing. This includes circumstances in which the inmate cannot be moved, escorted, or otherwise accommodated because he or she is comatose, has been severely injured or is medically unable to be present or participate in a committee hearing. Hearings are held over the telephone or via videoconference for inmates who are housed in another state or federal jurisdiction. Special arrangements are made for inmates who are in protective custody and accommodations are made, such as the committee appearing outside the cell door or at the bedside of the inmate (in the infirmary or

in a community hospital) to allow for the inmate to be present in committee. Current practice is to accommodate the full range of possibilities ranging from temporary medical conditions to disabilities. These hearing are also held upon inmate request to address significant safety concerns which may jeopardize an inmate's safety when appearing before committee and no other alternative for holding a committee is available, or when his or her presence in the committee hearing jeopardizes his life or he presents a significant threat to the life of staff, another inmate, or member of the public; and when no other reasonable and correctionally sound alternative is available. These practices are consistent with the ADA requirements.